

# **2016 EXCEL CONFERENCE AGENDA**

## **(EXamining Conflicts in Employment Law)**

The EXCEL Conference is where EEO, HR , and ADR practitioners from private and federal organizations gather for four days of outstanding education, training and professional development. There are three plenary sessions, two specialty tracks, and over 50 open workshops that give participants the needed knowledge, and skills to enhance their performance, and meet the evolving demands of today's workplace.

The workshops are designated by attending audience to assist participants in selecting the most appropriate session. These designations are suggestions and participants are encouraged to explore the different open workshops. Participants are asked to select one open workshop from each of the sessions listed below. Plenary sessions occur on Tuesday, Wednesday and Thursday morning. Attendees enrolled in the specialty tracks are not scheduled to participate in the Wednesday and Thursday plenary sessions.

The Specialty Tracks are **Basic Mediation** and **MD-715: Barrier Analysis**. The tracks are limited to 40 participants. Basic Mediation is a four (4) day track and MD-715: Barrier Analysis is a three (3) day track.

### **SUNDAY, July 17, 2016**

\*Pre-Conference Registration (Check In): 3:00 p.m. - 7:00 p.m.

### **MONDAY, July 18, 2016**

Pre-Conference Sessions: 8:30 a.m. - 4:30 p.m.

#### **A. Counselor Refresher Training**

Session will meet requirements for eight (8) hours of annual refresher training for counselors as outlined in MD-110.

#### **B. Investigator Refresher Training**

Session will meet requirements for eight (8) hours of annual refresher training for investigators as outlined in MD-110.

#### **C. Litigating before the EEOC and MSPB**

Session will cover discovery, summary judgment, mixed cases, mixed appeals, settlements and sanctions. Get tips of what to do and what not to do in hearings before the EEOC and the MSPB.

\*Conference & Exhibitors Registration (Check In): 3:00 p.m. – 7:00 p.m.

### **TUESDAY, July 19, 2016**

7:30 a.m. – 8:30 a.m. Continental Breakfast

## **8:30 a.m. – 10:00 a.m. PLENARY SESSIONS**

- 8:30 a.m. – 8:45 a.m. Welcome and Opening Color Guard (with Mayor of S.F.)
- 8:45 a.m. – 9:15 a.m. Greetings from EEOC Chair Jenny R. Yang and Introduction of Keynote Speaker
- 9:15 a.m. – 10:00 a.m. Opening Keynote: Technology Industry Leader

## **10:00 a.m. - 10:30 a.m. Mid-Morning Break**

### ***WORKSHOP SESSION I: 10:30 a.m. – 12:00p.m.***

- A. **Just Get a Clue (Investigative Questioning)** (Federal audience) In this seminar for investigators, experienced EEO professionals will discuss how to skillfully examine the “why” behind the “what.” This course will delve into the legal theories behind complainants’ claims of discrimination and how to use those theories to conduct the most effective investigations. At the end of this course, you will have all the clues and take away model questions to use as guides for future investigations.
- B. **The Latest Developments in LGBT Rights in the Workplace** (Private/Federal audience) LGBT issues have become a hot topic in public debate, a debate that spills over into the workplace. Join EEOC’s General Counsel Office and an experienced employment lawyer for a discussion of the cases and legal precedents that led to the Commission’s decisions on LGBT coverage.
- C. **Specialized Reasonable Accommodations Issues** (Private/Federal audience) Despite years of providing accommodations under the Rehabilitation Act and ADA, accommodation scenarios which require creativity and patience persist in the workplace. This session will look at a number of case studies dealing with challenging reasonable accommodation situations, with particular emphasis on telework and those who are unable to report to work.
- D. **FedSep: A Brave New Digital World** (Federal audience) A panel of EEOC Hearings and Appellate staff highlights the submission process and requirements for agencies to submit digital documentation to the Commission. Because paper files are so last year ...
- E. **Why We Found Discrimination** (Federal Audience) Two AJ’s will give specifics of why discrimination was found in actual cases, discussing the fact scenarios and the particular problems in the case.
- F. **Let’s Make a Deal: The Art of Settlement Negotiations** (Private/Federal audience) This session, through the use of a role play exercise, will introduce participants to concepts of “interest-based” bargaining and how to gain value in negotiations rather than just “dividing the pie.” Learn to bargain over what really matters.
- G. **Are you Really an EEO Employer? From the Theoretical to the Practical** (Private audience) Does your recruitment and hiring practices reflect your applicant pool? Do you have barriers in your recruitment and hiring process that may be limiting your ability to achieve a diverse workforce? This session will examine areas where barriers exist to recruitment and hiring and look at best practices for eliminating those barriers so that workplace diversity can be achieved.

- H. **Beneath the Surface: Spotlighting Issues Affecting Vulnerable Workers** (Private audience) The EEOC's Strategic Enforcement Plan identifies the protection of Immigrant, Migrant and Other Vulnerable Workers as a national priority. This session will examine disparate pay, job segregation, harassment, trafficking and discriminatory policies affecting vulnerable workers. Specific cases will be highlighted and actions employers need to take will be discussed.

## **12:00p.m. - 1:30 p.m. - Lunch**

### ***WORKSHOP SESSION II: 1:30 p.m. – 3:00 p.m.***

- A. **What's in Your Counselor's Toolkit?** (Federal audience) As the entry point into the federal EEO realm, counseling plays a unique and increasingly important role. This session is designed to enhance skills for both the novice and experienced EEO counselor by providing tools, tips and best practices to increase engagement, efficiency and effectiveness during counseling.
- B. **What's New in Federal Sector Policy** (Federal audience) Do you know the revisions to Management Directive -110 and how they affect the EEO complaint process? Do you understand the potential changes for agencies and individuals with disabilities under the Notice of Proposed Rulemaking for Section 501 of the Rehabilitation Act? This session will summarize the latest policy changes affecting the Federal Sector, both proposed and final, and give you an opportunity to ask your questions and explore ramifications.
- C. **There's Something About JAN (Job Accommodation Network)** (Federal audience) JAN is a free consulting service funded by the U.S. Department of Labor's Office of Disability Employment Policy. It provides assistance on workplace accommodations and disability employment issues to employees and employers. In this session, a JAN consultant will explain how to use JAN as a free resource and will discuss workplace accommodation examples for employees with varied disabilities. With the results of an ongoing study of over 2,000 employers who utilized JAN's resources as a background, this session will be informative to employees and employers alike.
- D. **The Big Payback Can Lead to the Big Payout: The High Cost of Retaliation** (Private/Federal audience) Significant costs are associated with Retaliation; monetary awards and settlements, low morale, high turnover, etc. Retaliation remains the most frequently filed charge/complaint with the EEOC. What is retaliation? What can an employer do to combat retaliation? How can an employer avoid retaliation? These questions will be answered in this session.
- E. **Direct and Cross Examination and Other Tips for EEOC Hearings** (Federal audience) Learn how to effectively examine witnesses at EEOC hearings from an experienced AJ, Complainant's and Agency's representative. This presentation will include tips on preparing for examination, how to conduct direct and cross-examination and how to handle an examination that goes unexpectedly awry. Come away with ten best practices and ten mistakes to avoid. Also tips on rules of evidence.
- F. **Conflict Resolution through Reframing Perspectives** (Private/Federal audience) Participants in ADR may be "stuck" in a positional mindset. One effective technique to dislodge them is the use of perspective reframing. Dispute resolution practitioners can also use facilitative problem solving to solve workplace conflicts that may not rise to the level of an EEO complaint.

- G. **Facebook Friends, Workplace Enemies** (Private/Federal audience) There are over 2 billion active social media users in the world. Everything in the world is now in the workplace and everything in the workplace is now in the world. For the HR/EEO Professional issues of free speech, religious beliefs can arise that result in workplace conflict and complaints of discrimination. This session explores those challenges and the legal guidance that affects those issues.
- H. **EEO “CSI”: How to Conduct and Survive the Internal Harassment Investigation** (Private/Federal audience) Workplace harassment investigations can be one of the most challenging duties an HR Professional may encounter. An employer’s prompt and effective response to an allegation of workplace harassment can limit or eliminate their liability in a workplace harassment complaint or litigation. It is vital that employers have an effective system to investigate and resolve these issues. This session will examine the legal requirements and provide best practices for conducting a good internal investigation.

### ***3:00p.m.-3:30p.m. - Mid-Afternoon Break***

### ***WORKSHOP SESSION III: 3:30 p.m. – 5:00 p.m.***

- A. **Managing Religious Diversity at Work** (Private/Federal audience) Both the Supreme Court and the EEOC have reinforced the rights of employees and applicants to engage in sincerely held religious practices. As these practices become more intertwined into every aspect of life, managers and HR officials must frequently address the rights and responsibilities of employees/applicants and employers. At the same time, employers must be cognizant of the concerns of other employees when working alongside others with whose religious practices they are unfamiliar. This session will apply the principles of religious discrimination law to a number of scenarios, both factual and hypothetical, with an emphasis on resolving workplace issues.
- B. **Ask EEOC** (Private/Federal audience) Do you have questions you have always wanted to ask EEOC? This session allows you to do just that. You will have the opportunity to ask questions concerning any aspect of EEOC from the beginning to the end of the charge process, alternative dispute resolution, litigation or federal sector processing. Bring your questions and EEOC staff will be there with answers.
- C. **Qualification Standard or Essential Function?** (Private/Federal audience) What is the difference between a qualification standard and an essential function? How are courts and EEOC interpreting the definitions and applications of each? After 25 years under the ADA, the distinctions continue to be debated with sometimes surprising real world results. Using scenarios from actual cases, this session will explore why these issues can still confuse even the most skilled EEO practitioner.
- D. **EEO Training – Helping or Hurting the Work Environment** (Private/Federal Audience) The most common anti-discrimination practice is EEO training. Indeed, surveys of human resource practitioners conducted by the Society for Human Resource Management suggest that approximately 2/3rds of companies are engaging in some sort of educational efforts related to diversity and harassment. This is up from about 1/3 in the early 1990s and stands in contrast to claims in the popular media that diversity training doesn't work. In this session, we will present evidence from social science regarding how, when, and why some EEO training programs are effective in improving trainees' knowledge, attitudes, and behaviors.

- E. **Complex Discovery and eDiscovery** (Federal audience) This advanced session focuses on discovery in large or complex EEOC cases. Learn ways in which parties can work together to eliminate discovery disputes and avoid sanctions for not complying with discovery. The session also focuses on the legal issues that arise relating to electronic discovery in EEOC litigation and deals with the responsibility to retain electronic information that may serve as evidence.
- F. **Getting the Most from Managers in Resolving EEO and other Workplace Disputes** (Private/Federal audience) One tool for a mediator to be successful is a manager who understands and is fully engaged in the process, and has an interest in reaching an agreement. This session will explore what is at stake for managers and how mediators and ADR specialists can address managers' interests and gain partners to work toward resolution.
- G. **Conducting Internal Employment Eligibility Verification Form Audits** (Private audience) The U. S. Department of Homeland Security, Immigration and Customs Enforcement (ICE) and U. S. Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) recently issued Joint Guidance for Employers Conducting Internal Employment Eligibility Verification Form I-9 Audits. While not required, many employers want to conduct an internal audit of Forms I-9 to ensure ongoing compliance with the employer sanctions provision of the Immigration and Nationality Act. This session will examine that guidance and answer questions about these audits.
- H. **Legal Update: Significant Cases that Impact Your Organization** (Private/Federal audience) The courts have been very busy this year. Hear from the EEOC about the latest cases and precedent setting decisions and their implications for your workplace, including wellness programs.

## **WEDNESDAY, July 20, 2016**

7:00 a.m. – 8:30 a.m. Continental Breakfast

### **8:30 a.m. – 10:00 a.m. PLENARY SESSIONS**

8:30a.m. – 9:15a.m. Keynote Speaker (Technology Industry Leader or LGBT Leader)

9:15a.m. – 10:00a.m. Plenary EEOC Topic

### **10:00 a.m. - 10:30 a.m. - Mid-Morning Break**

### ***WORKSHOP SESSION IV: 10:30 a.m. – 12:00p.m.***

- A. **LGBT Federal Employees: “Lavender Scare” to Civil Rights Protection** (Federal audience) Historians refer to a time in the 1950s, as the “Lavender Scare.” During this period, thousands of government workers were fired, simply because they were LGBT or suspected of being LGBT. This purge continued for several years, negatively impacting the culture of the federal workplace. The landscape has changed dramatically in the recent past, with landmark decisions, from the Supreme Court, the United States Equal Employment Opportunity Commission and the United States Office of Special Counsel. This session will consider that progress and share information on the decisions by the EEOC and the OSC and their impact on federal employees and the workplace culture.

- B. **Advanced Dismissal Workshop: Drafting the Model Acceptance/Dismissal Letter** (Federal audience) Are the allegations actually facts in support of individual acts of disparate treatment or part of a claim of harassment? This session will show how to write a clear acceptance letter, explaining which are the bases and the real claims and which are simply the alleged discriminatory acts that support those claims. Learn how to write a clear statement of the claims not accepted and the reasons they are rejected.
- C. **Barking up the Right Tree: Service Animals in the Workplace** (Private/Federal audience) The presence of service animals in the workplace is becoming increasingly more common, yet many professionals are still unaware of appropriate reasonable accommodations to provide handlers and their animals and how to deal with the complex questions that arise as a result of including a service animal in the workplace. Meet service animals and their handlers, as this presentation will provide an in-depth look at discriminatory perspectives, best practices in the workplace, and the importance of the interactive process when an employee works with a service animal.
- D. **Litigating Class Actions before EEOC** (Federal audience) This advanced session focuses on how to meet or contest the prerequisites of a class action, pre and post certification discovery and legal briefing during the various stages of EEOC class action complaints.
- E. **The Impact of Employee Engagement on EEO Complaints** (Private/Federal audience) This session will explore thoughts on the correlation between employee engagement and its potential impact on EEO complaints. The attendees will learn to understand the underlying concepts of employee engagement; explore the relationship between employee engagement and EEO complaints; understand the neuroscience of employee engagement and explore fresh ideas for enhancing organizational success through its people.
- F. **Big Data: What is it and How do we Use it?** (Private/Federal audience) Everywhere in the federal government, people are talking about big data—"high-volume, high-velocity, and high-variety information assets"—and exploring ways to process that data and use it towards refining insights and making better decisions. This session will provide an introduction to big data, predictive analytics, and data visualization, and lead a discussion on how these emerging concepts can be applied in building a model EEO program.
- G. **Working 9 to 5: Getting Paid for 9 to 2** (Private/Federal audience) Women earn an average of 78 cents for every dollar earned by men. For women of color and women with disabilities that gap is even greater. Equal Pay is not just a women's issue. Families, communities and our economy are impacted because of this pay disparity. This session reviews the Equal Pay Act and provides employers with guidance and tips for addressing wage issues in the workplace. Learn about EEOC's new pay data collection efforts using the EEO-1
- H. **Litigation Priorities from the General Counsel** (Private audience) Learn what cases the EEOC's General Counsel believes are key to helping to eliminate discrimination in employment.

## 12:00pm-1:30pm - Lunch

### ***WORKSHOP SESSION V: 1:30 p.m. – 3:00 p.m.***

- A. **Ask the AJ** (Federal audience) Do you have questions for our panel of veteran EEOC administrative judges? This is your opportunity to voice them. Come prepared for a lively, interactive session.
- B. **Without an Anti-Harassment Program, it's not a Model EEO Workplace** (Federal audience) EEOC's regulations and management directives establish that any model federal EEO program must include an anti-harassment program that operates separately from the EEO complaints processing component. And the Supreme Court has established that the existence of such anti-harassment policies/procedures may serve as an agency's affirmative defense. So why do so many agencies still lack adequate anti-harassment programs? Join us for a nuts-and-bolts discussion covering the business case for such programs, a comprehensive review of the legal and regulatory requirements of the roles and responsibilities of federal agencies in preventing harassment and avoiding liability, and a practical guide to how such a program should operate to prevent and stop harassment – before a complaint is ever filed.
- C. **Do Ask, Do Tell: Strategies for Encouraging Self-Identification of Disability in the Federal Sector** (Federal Audience) Proposed changes to Section 501 of the Rehabilitation Act are poised to set goals across agencies to establish equal representation of people with disabilities at all grade levels, including higher positions. Clearly, self-identification is a key tool agencies must use to document progress toward these goals. This session will explore evidenced-based strategies that research has shown to be effective in fostering an inclusive work culture that results in applicants and employees with disabilities feeling safe to self-identify as a person with a disability. It will also address recent and planned activities conducted by the Employer Assistance and Resource Network on Disability Inclusion (EARN) related to the employment of people with disabilities in the federal sector and what EARN has identified as keys to being a model employer.
- D. **Labor Pains? Examining Pregnancy Discrimination in the Workplace** (Private/Federal audience) Pregnancy discrimination claims continue to be on the rise despite being a prohibited workplace practice for over 38 years. In 2014 the EEOC issued updated guidance on pregnancy discrimination and this session will explore that guidance and significant court cases and their implications. This session will also cover the intersection of the PDA/ADA.
- E. **How We Do it: Panel on Federal Agency Investigations.** (Federal audience) During this interactive session, several agencies will discuss their plans to enhance the effectiveness of their EEO investigations. This session will include presentations on GSA's "Lean Six Sigma" program, lessons learned from USCIS' decision to internalize EEO investigations, and NRC's top challenges for investigators.

- F. **Islamophobia** (Federal/Private Audience) Islamophobia is all around us. Hate crimes towards Muslim citizens are on the rise, following San Bernadino; 20 hate crimes towards Muslims were reported in a two week period according to the Anti-defamation league. The fear of Islam is instilled through social media and daily news reports. And, in the face of this criticism and threat, Muslim employees come to work every day. How can it not impact the work environment? During this session, we will look at the impact of the existing cultural environment, both on Muslim employees and on other employees' approaches toward Muslims. This session will be designed to assist in creating a more inclusive environment and suggest constructive ways to deal with issues surrounding Islamophobia.
- G. **What I Learned from "Shark Tank": Marketing your ADR Program** (Private/Federal audience) This seminar will examine why people remain resistant to mediation leaving the programs underutilized. An alternative approach to encourage people in conflict to participate in ADR will be offered by: examining obstacles; looking at objections and the practices of the past; and providing insights from neuroscience and lessons from the "Shark Tank" on marketing strategies.
- H. **I Got an Email from the EEOC: Digital Charge System & the EEOC Charge Process** (Private audience) The EEOC created the Action Council for Transformation to a Digital Charge System (ACT Digital) to develop a set on online applications for use by the public. The first application for the private sector charge system is Phase 1 of a Digital Charge System. This session will provide information on how this system works and the benefits of using this system. Additionally, the entire charge process from filing to resolution will be covered.

## **3:00 p.m. - 3:30 p.m. - Mid-Afternoon Break**

### ***WORKSHOP SESSION VI: 3:30 p.m. – 5:00 p.m.***

- A. **More than a FAD - Writing Timely and Effective Final Agency Decisions.** (Federal audience) Does your agency consistently produce well written, effective FADs? By presenting best practices and tips, this session aims to provide attendees with balanced guidance and practical insight on what a FAD must address, and how to address case issues proficiently. This session will also identify some potentially tricky issues, and will invite attendees to raise their most problematic scenarios for analysis.
- B. **Federal Disability Programs: Essential Elements and Solid Strategies** (Federal audience) Despite recent gains in federal employment of individuals with disabilities, many Disability Program Managers still struggle with the basics, while others may not know what tools and strategies are available to take their program to the next level. Come hear about effective, proven strategies, as well as management tools you can use to evaluate the strengths, weaknesses, opportunities, and threats to your agency's program. Through this interactive session, the presenters will help you create a roadmap to get your agency's program on the right track, and where it needs to be.
- C. **Mixed Cases** (Federal audience) It is easier to grapple with mixed cases when you understand the objective of the mixed case process. This session will focus on the aim of these often misunderstood rules as well as an understanding of mixed case procedures, including when elections can occur, what constitutes an "irrevocable" election, how collective bargaining agreements affect the elections, and practical tips why one forum should be elected over another.



- D. **The Win-Win Approach to EEO and HR: Building and Maintaining a Collaborative Relationship** (Federal audience) EEO and HR should establish and enjoy an effective and satisfying workplace relationship, yet all too often it becomes adversarial and unproductive. This course will provide EEO and HR professionals with tools to build a relationship by recognizing shared and overarching program responsibilities, and present best practices to maintain a rewarding and mission-driven partnership.
- E. **Ethics for Attorneys** (2 hour for CLE credit – local bar probably) (Private/Federal audience) Earn that hard-to-get CLE credit by taking this two hour session on ethics for attorneys.
- F. **Representation in Mediation** (Private/Federal audience) Whether representing employers or employees, representatives face numerous tactical, ethical and process challenges during mediation. Serving as an advocate in a collaborative environment requires planning, creativity and flexibility. Who speaks when, on what topic and how the material is best presented can impact the mediated outcome.
- G. **Dusting off the Employee Handbook** (Private audience) Due to recent developments in case law, your employee handbook may need updating. In this session you will learn about recent rulings and other guidance such as social media, bullying, nursing, etc. In some instances, the language of your current policy may invite issues, such that it should be modified ASAP. In other instances, a policy should be added (or deleted). We will also examine best practices with respect to most frequently referenced policies – e.g. progressive discipline, harassment and discrimination, drug and alcohol testing, workplace violence and searches, etc.
- H. **Unlawful Workplace Harassment: (EEOC)** (Private/Federal audience) What is workplace harassment? When is it unlawful? Is it the same as workplace bullying? This session will cover all of this and provide best tips for preventing and addressing harassment in the workplace.

**THURSDAY, July 21, 2016, 8:30 a.m. – 10:00 a.m.**

## **PLENARY SESSIONS**

8:30 – 9:15 Keynote Speaker (Technology Industry Leader or LGBT Leader)

9:15 – 10:00 Plenary EEOC Topic

## **WORKSHOP SESSION VII: 10:30 a.m. – 12:00p.m.**

- A. **Litigating Complex Attorney Fee Petitions** (Federal audience) Learn how to draft an effective petition for attorney's fees and how to defend against a petition. Topics include relevant case law on how to calculate hourly rates, what is a reasonable amount of hours on representation, when is retention of out-of town counsel reasonable, how to calculate an award when complainant did not prevail on all issues raised, and what costs can properly be recovered.
- B. **Breaking Bad: Creating a Culture of Civility and Professionalism and Why it Matters** (Private/Federal audience) This session looks at examples of risks to the agency mission, safety and bottom line when employees behave badly. Insight will be offered on steps which can be taken to create and maintain a workplace culture that demonstrates commitment to civility and professional values.

- C. **Ask an OFO Appellate Attorney** (Federal audience) Here's your opportunity to speak face-to-face with OFO appellate attorneys. Do you have a question about the appellate process? A comment on a recent decision? A suggestion for improved customer service? OFO wants to hear from you! Bring your comments, suggestions, and questions to this panel discussion.
- D. **Negotiation Research You Can Use to Help Settle Your Case** (Federal/Private audience) This instructive class from an experienced mediator and attorney will help anyone negotiate solutions to workplace conflict, including HR, EEO, mediators and attorneys. It is very interactive with YouTube videos, lectures and roleplaying.
- E. **Human Stories & Their Practical Workplace Applications from the LGBT Community** (Private/Federal audience) Getting beyond an analysis of the law, LGBT involves real people with real stories. Hear real life experiences and success stories that you can use to address LGBT discrimination in the workplace and foster LGBT inclusion.
- F. **Show Me the Money: Pay Transparency** (Private audience) Pay Transparency is not the latest buzz word; it is a viable practice in achieving pay equality. The NLRB and DOL will share the latest guidance and tips on pay transparency from their agencies. EEOC will provide information on their new pay data collection efforts using the EEO-1.
- G. **Conflict: An HR/EEO Survival Guide** (Private audience) Workplace conflicts can fester and grow into charges and litigation. What options exist for the employer to utilize to resolve workplace conflict? This session explores some of those options, including Alternative Dispute Resolution. Gain insight into how various options work and how they can serve you to resolve those conflicts.
- H. **The Interactive Process: Sounds Easy, Why Is it so Hard?** (Private/Federal audience) ADA Reasonable Accommodation is not new, yet questions persist in how to navigate the interactive process. This session will explore the requirement to provide reasonable accommodation, discuss the guidance on reasonable accommodation and the emerging issues in reasonable accommodation.

## **12:00 p.m. - 1:30 p.m. - Lunch**

### ***WORKSHOP SESSION VIII: 1:30 p.m. – 3:00 p.m.***

- A. **Federal Sector Case Updates** (Federal audience) Join us for a discussion of the most recent cases issued by the EEOC on the hot topics of the day.
- B. **Making it Personal – Retaliation** (Private/Federal audience) Retaliation has been the most frequently alleged basis of discrimination for many years. In addition, the number of discrimination findings based on a retaliation claim has outpaced other bases of discrimination. In a large number of these cases, we see an original discrimination allegation (on a basis other than retaliation) fail to establish a violation of the law, but the subsequent retaliation allegation results in a discrimination finding. Why is this so common...A situation moves from an unproven/unsubstantiated allegation to a later violation based on the manager's response to the employee initiating a complaint? The simple answer is that managers are human beings and often seek to avenge a perceived offense. In this workshop, we discuss the behavioral science and organizational opportunities that can contribute to retaliatory behavior as well as offer some recommendations to proactively address potential retaliatory behavior.

- C. **Applying Mediation Techniques in Traditional Counseling** (Private/Federal audience) Learn how integrating mediation techniques in counseling can result in higher resolution rates. Topics include: leveraging “shuttle” diplomacy while counseling; communicating expectations to the parties; focusing parties on interests versus position; exploring alternatives for resolution; and closing the deal.
- D. **Everything You Ever Wanted to Know about Form 462 but Were Afraid to Ask** (Federal audience) EEOC’s Form 462 tracks federal agency complaints data. See? You’re learning already. Become your agency’s resident 462 expert in a mere 90 minutes.
- E. **Micro-aggressions and Micro-inequities at Work: How Can Such Small Things Cause Big Problems?** (Private/Federal audience) Micro-aggressions and micro-inequities comprise part of the theory on micro-messaging and refers to ways in which individuals are either singled out, overlooked, ignored, demeaned, stereotyped or otherwise discounted based on a characteristic such as race or gender. If an employer allows them to go unchecked the end result is employee disengagement and can lead to huge problems in the workplace, including discrimination complaints and litigation.
- F. **EEOC’s Systemic Program** (Private audience) Systemic cases address patterns or practices of discrimination or policies that have a broad impact on a region, industry, or a group of employees or job applicants. EEOC’s Systemic Program
- G. **Tricky HR Situations?** (Private/Federal audience) In this session, we will explore the difficult or “tricky” HR issues that can come up. Legal experts will discuss both sides of an issue and provide practical guidance and tips on how to handle these situations. Tricky issues covering Pregnancy, ADA, Harassment and more will be addressed.

## **3:00 p.m. - 3:30 p.m. - Mid-Afternoon Break**

### ***WORKSHOP SESSION IX: 3:30 p.m. – 5:00 p.m.***

- A. **Mock Hearing** (Federal audience) This is your chance to observe an EEOC hearing. An experienced EEOC Administrative Judge will preside over a mock hearing before skilled Agency and Complainant counsel. For those who are EEO counselors, investigators or otherwise involved in the process, this is your opportunity to see the end result of your efforts. Attorneys - watch how to examine and cross-examine witnesses, introduce documents and make objections.
- B. **Managing Leave Abuse – Effectively Addressing Absenteeism** (Private/Federal audience) This session begins with a review of leave categories, and details the types of leave to which there is entitlement and no entitlement. Also covered are requests for medical documentation, extended leave scenarios and the Cook criteria.
- C. **Special Emphasis Programs** (Federal audience) Special Emphasis Programs (SEP) are not about party planning or once-a-year observances. This session will explore techniques to increase program success and visibility in the workplace. Participants will identify and prioritize critical workplace barriers and strategies to identify the root cause. This session will provide SEP managers and staff with alternative techniques for creating a result driven SEP program.

- D. Building Blocks of Employee Engagement** (Private/Federal audience) Even good leaders can negatively impact employees by not being consciously inclusive. This interactive session for agency leaders will explore how to promote employee engagement and satisfaction, and provide insight into behaviors that further and/or hinder fairness, openness, cooperation, and empowerment. Come learn, share and network!
- E. Age Discrimination: 40 is the New 30, Except in the Workplace** (Private/Federal audience) This session will explore actual age discrimination cases. The participants will review real age discrimination cases to learn why discrimination was found to have occurred. Discussions will center on the fact scenarios and the particular nuances of each case. Practical guidance will be provided to highlight how a different course of action could have resulted in a different outcome in these cases.
- F. Managing the Art of Crucial Conversations** (Private/Federal audience) Have you ever had to have that difficult, but essential, conversation with someone in the workplace? Putting the conversation off just makes things worse. This workshop will explore ways to make that conversation happen quickly and professionally so that peace and productivity are restored. Tools will be provided and participants will be given tips on verbal and non-verbal congruence, conversation “do’s and don’ts”, and establishing a time, place and tone for having the conversation.
- G. Reality Check: Real Life Cases of Race Discrimination** (Private/Federal audience) Race discrimination cases comprised 34.7% of the charges filed with EEOC in FY2015. Despite Title VII’s prohibitions against race discrimination, it continues to be one of the most frequently filed charges with EEOC. This session will explore actual cases of race discrimination, with discussion of facts, and tips on what can be learned from these cases.

## **SPECIALTY TRACKS**

### **Basic Mediation Track (Monday, July 18, 2016 – Thursday, July 21, 2016): 8:30a.m. – 4:30p.m.**

Want to learn how to settle and mediate EEO cases at any stage of the proceeding? This small basic mediation specialty track will give you hands on experience. Expert EEOC and other mediators will take you through the basics to intermediate mediation techniques. There will be role-playing exercises.

### **MD-715: Barrier Analysis (Tuesday, July 19, 2016 – Thursday, July 21, 2016): 8:30a.m. – 4:30p.m.**

This three-day session provides an overview of affirmative employment, identifying programmatic deficiencies and the barrier analysis process to include: legal and public policy foundations; analysis and interpretation of workforce statistics found in MD-715 data tables; trigger identification; barrier analysis investigation; organizing findings and preparing action plans designed to eliminate barriers; and follow-up on MD-715 reports from previous reporting cycles. The session will present hands-on simulations of actual situations typically encountered in preparing MD-715 reports